

RECEIVED
2005 SEP 13 PM 12:55
COURT
RICO
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525

NO. CR-99-306 (PG)

RECEIVED & FILED
05 OCT 13 PM 4:00
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JOAN, P.R.

DEFENDANT'S AMENDED TO THIS MOTION
UNDER § 2255; 28 U.S.C.A.

BACKGROUND:

On September 22, 1999, a grand jury returned a two counts indictment charging the defendant Ramon Diaz Ortiz with a conspiracy to possess with intent to distribute, and to distribute multi-kilograms quantities of controlled substances, that is quantities in excess of five (5) kilograms of cocaine, and quantities in excess of one hundred (100) kilograms of marihuana as prohibited by 21 U.S.C. §§ 841(a)(1) and 846; count I.

A conspiracy to import into the United States from the Dominican Republic, multi-kilograms quantities of controlled substances, specifically amounts in excess of five (5) kilograms of cocaine, and amounts in excess of one hundred (100) kilograms of marihuana as prohibited by 21 U.S.C. §§ 952(a) and 963; count II.

On or about November 27, 2000, the defendant was arrested in the above captioned matter.

On February 26, 2001, the defendant's entered into a Plea Agreement with the United States Attorney in count I, in exchange to 216 months in prison, plus a supervise release term of at least five (5) year and the dimissal of count II in the above indictment.

On July 13, 2001, the court sentenced the defendant to 260 months and eight (8) year of supervise release intead of 216 months and five (5) year of supervise release.

The defendant's filed a timely appeal to the First Circuit Court of Appeals, besicallly challenging the trial court discrepancy between the term of imprisonment.

The court's appointed Jack W. Pirozzolo, Esq., of the 155 Seaport Boulevard, Boston, MA 02210, to represent the defendant. Thereof, the typographic erred under the term of imprisonment was corrected and the appeal denied on July 11, 2003. See appeal docket NO. 01-2220. However, nothing was done with the supervise release term which should be five (5) year intead of the current eight (8) year.

On or about August 7, 2004, the defendant's filed an illiterate and very deficient § 2255 motion and even thoulgh the court's not answer to the defendant submission yet, the certify

mail return receipt showed that it was received by the Clerk of Court Offices on August 21, 2004. Thus this amended is file pursuant to the Federal Rules Governing § 2255 Proceedings rule 2(d).

RULE 2(d) "return of insufficient motion. If a motion received by the clerk of the district court does not comply with the requirements of rule 2 or 3, it may be returned by the clerk to the movant with a statement of the reason for its return, and it shall be returned if the clerk is so directed by a judge of the court. The clerk shall retain a copy of the motion." Supra, Id.

Consequently, the defendant's challenging the valid of his guilty plea as follow:

GROUND I

WHETHER THE DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

1. The defendant Ramon Diaz Ortiz native language is Spanish and also had limited education, did not speak, read, write or understand the English language.

2. Guilty plea counsel Hector E. Guzman-Silva, Jr., Esq. ("Guilty plea counsel") rendered ineffective assistance by failed to translate the plea agreement into the defendant (Spanish) native language.

3. Guilty plea counsel's rendered ineffective assistance by willfully allowed the defendant to entered an unknowingly and involuntary plea agreement which contained prejudicial

clauses, such as the waiving of the defendant right to attacked the valid of his conviction and sentenced as well as his Six Amendment constitutional right to effective assistance of counsel.

4. Guilty plea counsel's coerced the defendant to signed his unknowingly plea agreement.

5. The defendant's avers and maintains that if guilty plea counsel's translate the plea agreement into his native language, he should not had signed it what-so-ever.

6. The defendant's entitle to relief because he did not understood the ramifications of entered an unknowingly plea agreement.

The defendant's avers that his waivers was not knowingly and intelligent because he did not understood the language in which the plea agreement was written.

GROUND II

WHETHER THE COURT'S FAILED TO CONDUCTED A COMPREHENSIVE RULE 11 HEARING, FED.R.C.P. 11 AND WHETHER THE COURT'S ERRED BY IMPOSED A EIGHT (8) YEAR OF SUPERVISE RELEASE?

1. The defendant's maintains that he's entitle to withdrawal his guilty plea because the court's failure to ensure that he understand the nature of the charge underlying his plea agreement.

At the guilty plea hearing, the followings were exchange between the court and the defendant:

THE COURT: in the meantime, Mr. Diaz, at parograph 9 it says there that you are waiving any right to appeal the sentence imposed and I want to make sure that you understand that you have a statutory right to appeal the sentence that I impose. Do you understand that?

THE DEFENDANT: well, yes, I do. I want appeal if I should have to appeal your sentence, your honor, if it's possible.

2. It is clear from the defendant responded hereto that he did not understood the terms of the plea agreement. However, the court did not inquiry whether the plea agreement was translated into the defendant native language.

3. The defendant's asserts that even though the court's addressed him in open court, it failed to ensure that the guilty plea wasn't coerced, unknowingly, and involuntary as require by Fed.R.C.P. 11.

4. The court's failed to complied with the procedural safeguards mandated by Fed.R.C.P. 11 prior to accepting the defendant guilty plea. Thus the court should allow the defendant to withdrew his guilty plea and either enter a newly guilty plea and/or stand trial.

Trial court's erred by imposed a eight (8) year term of supervise release intead of five (5) year as stipulated under the plea agreement. Inasmuch, the offense for which the defendant's plea guilty provide a supervise release of five (5) year.

The defendant Ramon Diaz Ortiz is entitle to relief because the court's failed to comply with the procedural safeguards mandated under the guilty plea laws.

Rule 11(c)(1) imposes upon a district court the obligation and responsibility to conduct a searching inquiry into the voluntariness of a defendant's guilty plea. United States v. Stitzer, 785 F. 2d 1506, 1513 (11th Cir.), Cert. denied, 479 U.S. 823, 107 S.Ct. 93, 93 L.Ed. 2d 44 (1986). Three core concerns underlie this rule: (1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea. United States v. Hourihan, 936 F. 2d 508, 511 n. 4 (11th Cir. 1991).

Phillips v. United States, 519 F. 2d 483 (1975); in Phillips the court found that: district judge did not personally address William Phillips concerning the waiver of his constitutional rights. Rather, the district judge accepted the following blanket statement from the defendant's counsel:

"I might also further indicate for this record that insofar as I am able I have advised my client of his consititutional rights; that is, he has a right to trial by jury and the different things that are guaranteed by the constitution. This plea is entered by me, and he will corroborate this, of guilty. This is his desire and his wish."

Prior to the 1966 revision of Rule 11, this statement might have passed muster. However, that amendment made it the personal

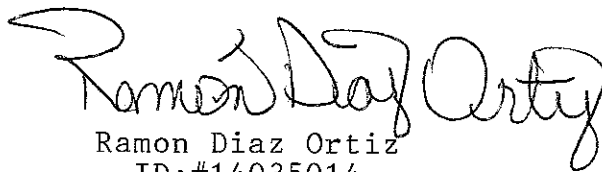
duty of the trial judge to question a defendant on the voluntariness of his plea. Statements by defendant's counsel do not satisfy Rule 11's mandate that the court personally address the defendant.

A defendant is entitled to plea anew if a United States District Court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11 of the Federal Rules of Criminal Procedure, which states the court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, and that judgment shall not be entered upon a guilty plea unless the court is satisfied that there is a factual basis for the plea. McCarthy v. United States, 394 U.S. 459; If a defendant guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is therefore void. Because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possess an understanding of the law in relation to the facts. *Supra*, *Id.*

WHEREFORE, it is for all the aforementioned reasons that the Defendant respectfully requests this honorable court Grant the above motion.

It is further requested that the court find that the defendant was prejudiced with its failed to comply with the mandated under Federal Rules of Criminal Procedural rule 11 and also that guilty plea counsel's rendered ineffective assistance in the above matter. Thus the court should Granted the defendant to withdrawal his guilty plea and either enter a newly one and/or stand trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ramon Diaz Ortiz". The signature is fluid and cursive, with the first name "Ramon" being the most prominent.

Ramon Diaz Ortiz
ID:#14035014
USP-CANAAN
P.O.BOX 300
Waymart, Pa. 18472

Date/ 9/1/05